

CONTRACT FOR PEOPLESOFT VERSION 8 UPGRADE ASSISTANCE

THIS CONTRACT is made and entered into this 4th day of March 2002, by and between the CITY OF OVERLAND PARK, KANSAS, hereinafter called the City, and SOFT LINK, hereinafter called Consultant. It is the intention of the City to use the services of Consultant to assist City staff with the upgrade to version 8 of the Peoplesoft HRMS.

SECTION I - SCOPE OF SERVICES

In general Consultant shall provide expertise and assistance to City personnel for the upgrade to Peoplesoft version 8. The work Consultant shall do is to include, but not be limited to, the following:

1. Install and test Peoplesoft version 8 software on City specified servers.
2. Install latest version/release of PeopleTools software.
3. At the direction of the City's project manager and on an as needed basis, assist with all activities associated with upgrading to Peoplesoft 8 to include but not be limited to (1) applying pertinent patches, (2) comparing current online functionality with Peoplesoft 8, (3) redeveloping or retiring identified modifications, (4) assisting in developing system and acceptance test plans, (5) assisting in execution of test plans, (6) assisting in modifying internal system/database administration procedures, (7) performance tuning and OJT for City staff, (8) retirement of the Windows client where possible, (9) recommending training classes and (10) other activities needed to successfully upgrade to Peoplesoft 8.

SECTION II - COMPENSATION FOR CONSULTANT

The City agrees to pay Consultant at an hourly rate not to exceed \$120.00 per hour for each hour Consultant provides consulting services to the City according to the terms and specifications of this CONTRACT. The City also agrees to pay fair and reasonable travel, lodging and miscellaneous expenses associated with the work outlined in this Contract as approved by the City's Information Technology Director. The total amount invoiced by the Consultant to the City shall not exceed \$55,000.00 for the consulting services to be provided under this CONTRACT and all expenses. Consultant may submit invoices for work performed at any time. Invoices are to include at a minimum the name of the person doing the work, the date of the work, the hourly rate, the number of hours worked and a brief description of the work. The City agrees to remit payment for each valid invoice received and approved by the Information Technology Director or his/her designee within thirty (30) days from receipt of the invoice.

SECTION III - DISPUTE RESOLUTION

City and Consultant agree that disputes relative to the work performed should first be addressed by good faith negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Consultant shall proceed with the work as per this CONTRACT as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the parties' express written consent.

SECTION IV - TERMINATION FOR CONVENIENCE

Either party may terminate this CONTRACT at their convenience by giving the other party written notice. CONTRACT will be terminated on date either party receives such written notice from the other

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party. Any termination shall not relieve the City of its obligations to pay Consultant for services completed prior to the effective date of termination.

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SECTION V - ASSIGNMENT

Parties hereto agree that neither shall assign, sublet or transfer their interest in this CONTRACT without the written consent of the other and further agree that this CONTRACT binds the parties, their successors, trustees, assignees and legal representatives.

SECTION VI - PRIOR VERBAL OR WRITTEN STATEMENTS NOT BINDING

It is understood and agreed that the written terms and provisions of this CONTRACT shall supersede all prior verbal and written statements of any and every official and/or other representative of the City and Consultant and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, the written CONTRACT. In the event that the City issues a purchase order, work order, invoice or similar document relating to services performed, such purchase order or similar document shall be for the City's administrative purposes only and will not supplement, supersede, modify or affect any of the terms and conditions set forth herein.

SECTION VII - INDEPENDENT CONSULTANT

Consultant is an independent contractor and as such neither Consultant nor its personnel are agents or employees of the City.

SECTION VIII - INDEMNIFICATION

Consultant agrees to defend, indemnify and hold harmless the CITY OF OVERLAND PARK and its agents and/or employees from any and all claims, settlements, and judgements for bodily injury, physical property damage and/or death arising out of Consultant's or any of its agents, servants, employees' or subcontractors negligent acts, and for failure to act in the performance of this CONTRACT. Neither acceptance of the completed work nor payment therefore shall release Consultant of its obligation under this paragraph.

SECTION IX - NON-DISCRIMINATION AND OTHER LAWS

A. The Consultant agrees that:

1. the Consultant shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin ancestry or age;
2. in all solicitations or advertisements for employees, the Consultant shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
3. if the Consultant fails to comply with the manner in which the Consultant reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Consultant shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;

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4. if the Consultant is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Consultant shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
5. the Consultant shall include the provisions of subsections (A)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered into by a consultant:

- (a) who employs fewer than four employees during the term of such contract; or
 - (b) whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- B. The Consultant further agrees that the Consultant shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

SECTION X - PROHIBITION AGAINST CONTINGENT FEES

Consultant warrants that it has not employed or retained any person, firm, or corporation, other than a bona fide employee working solely for Consultant, to solicit or secure the awarding of this CONTRACT based upon an arrangement that the person, firm or corporation would receive any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award of this CONTRACT. For the breach or violation of the foregoing provision, the City shall have the right to terminate the CONTRACT without liability and, at its discretion to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

SECTION XI - APPLICABLE LAW, NONWAIVER

This CONTRACT is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas. The waiver of or failure to enforce any term or condition of this CONTRACT shall not be construed as a waiver of any other term or condition. If any provision is held to be unenforceable by a court or other tribunal, the enforceability of the other provisions shall not be affected.

SECTION XII - CONTRACT TERM

The term of this CONTRACT is one year beginning March 15, 2002 and ending March 14, 2003. This contract shall be renewed for successive twelve-month periods under the same terms and conditions as herein provided unless either party notifies in writing the other party at least thirty (30) days prior to the expiration of the then current twelve-month period of its intention to terminate the CONTRACT.

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SECTION XIII - SUBCONTRACTORS

Consultant shall have the right to subcontract, in part, the services to be provided under this CONTRACT, but shall not be relieved of its liability hereunder thereby. Work performed by any subcontractor hired by Consultant will not result in any additional cost to City. Consultant must notify the City of any proposed subcontractor(s) and the City shall have the right of approval thereof; however, such approval shall not be unreasonably withheld. Consultant agrees to the insurance requirements concerning the use of subcontractors as specified in Section XIV.

SECTION XIV - INSURANCE REQUIREMENTS

- (a) General -
The Consultant shall secure and maintain, throughout the duration of this contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Consultant shall provide certificates of insurance and renewals thereof on forms provided by the City. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.
- (b) Notice of Claim Reduction of Policy Limits -
The Consultant, upon receipt of notice of any claim in connection with the contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Consultant shall promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract) in excess of \$10,000.00, whether or not such impairment came about as a result of this contract.

In the event the City shall determine that the Consultant's aggregate limits of protection shall have been impaired or reduced to such extent that the City shall determine such limits inadequate for the balance of the project, the Consultant shall, upon notice from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

- (c) General Liability -
The Commercial General Liability insurance coverage that is to be provided by Consultant shall comply with appropriate section. Such insurance shall specifically insure the contractual liability assumed by the Consultant under SECTION VIII of this CONTRACT.

MINIMUM INSURANCE REQUIREMENTS

COMMERCIAL GENERAL LIABILITY POLICY (Complete Certificate "Form B")

General Aggregate: \$ 500,000

Products-Completed

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Operations Aggregate:	\$ 500,000
Personal & Advertising Injury:	\$ 500,000
Each Occurrence:	\$ 500,000

Policy must include the following conditions:

- a) Broad Form Contractual/Contractually Assumed Liability
 - b) Independent Contractors
 - c) Broad Form Property Damage
- (d) Automobile Liability -
Policy shall protect the Consultant against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicles and must include protection for either:

(A) Any Auto

OR

(B) All Owned Autos;
Hired Autos; and
Non-Owned Autos.

Limits of liability protection required are the SAME as the limits for the Commercial General Liability section. Policy shall insure the contractual liability assumed by the Consultant.

- (e) Workers' Compensation and Employer's Liability -
This insurance shall protect the Consultant against all claims under applicable state Workers' Compensation laws. The Consultant shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation law. The policy shall include liability limits not less than the following:

Workers' Compensation: Statutory

Employer's Liability:

Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

- (f) Professional Liability Insurance-
This insurance shall protect the Consultant against claims for damage arising from the work performed by Consultant as specified in Section I. The limits of protection shall be not less than one million dollars (\$1,000,000).

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(g) Industry Ratings –

The City will only accept coverage from an insurance carrier who offers proof that it:

- (1) Is licensed to do business in the State of Kansas;
- (2) Carries a Best's policy holder rating of B+ or better; and
- (3) Carries at least a Class X financial rating.

OR

Is a company mutually agreed upon by the City and Consultant.

(h) Subcontractors' Insurance - If part of the CONTRACT is to be sublet, Consultant shall either:

*Cover all subcontractors in its insurance policies, or

*Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Consultant shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its subcontractors.

TITLE XV - SEVERABILITY CLAUSE

Should any provision of this CONTRACT be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this CONTRACT shall be unaffected thereby and shall continue to be valid and enforceable.

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